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### PIPELINE EASEMENT

STATE OF TEXAS                   §  
  §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF SAN PATRICIO     §

This Pipeline Easement Agreement ("**Easement**") is entered into by and between the **City of Ingleside**, a Texas Home Rule City, whose address is P. O. Box 400, Ingleside, Texas 78362 ("**City**" or "**Grantor**"), and **Oxy Ingleside Energy Center, LLC**, a Delaware limited liability company, whose address is 5 Greenway Plaza, Suite 110, Houston, Texas 77046-0521 ("**Grantee**").

For and in consideration of the conditions, mutual covenants and agreements set out herein, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

#### **Section 1. Grant of Easement.**

A.     **Grant.** Grantor, subject to the terms, provisions and conditions contained herein, hereby GRANTS AND CONVEYS to Grantee, its successors and permitted assigns a non-exclusive easement under, over, on, and across the surface only of the forty foot (40') wide strip of property described on **Exhibit "A"** attached hereto and made a part hereof for all purposes (the "**Easement Property**") for the sole purposes (a) of laying, constructing, maintaining, repairing, inspecting, operating, replacing, changing the size of

(but never to exceed the original diameters), and removing up to four (4) pipelines of the following sizes and quantity: i) two (2) pipelines having diameters of up to twelve inches (12") each; ii) one (1) pipeline having a diameter of up to sixteen inches (16") and iii) one (1) pipeline having a diameter of up to twenty inches (20") (hereinafter referred to individually and collectively as "**Pipeline**" or "**Pipelines**"), and (b) to construct, install, operate, inspect, protect, maintain, repair, replace and remove (i) appurtenances to the Pipelines, including, but not limited to, fittings, tie-overs, valves, corrosion control equipment, communication equipment, including fiber, and any other appurtenances necessary for the Pipelines and (ii) communication equipment necessary for the Pipelines, including fiber; provided, however, any equipment and appurtenances that will be above ground must be approved in writing by Grantor in advance of installation of same (collectively, together with the Pipelines, the "**Facilities**"), on the Easement Property, and in each case for transporting oil, gas, condensate and substances that may be produced in association with oil, gas, or condensate, together with liquids or any other substances produced or manufactured therefrom, or any other substance that can be legally transported through a pipeline, through such Pipelines during the term of this Easement. All Pipelines must be placed within sixteen feet (16') of the centerline of the Easement Property.

B. **Relocation.** The rights of the Grantee under this Easement are subordinate to all Grantor's uses for public purposes. During the term of this Easement, Grantor may require Grantee to lower or relocate the Pipeline, equipment, facilities and appurtenances situated in the aforesaid Easement in the event the same materially interferes with or will materially interfere with: (1) the development of City's lands; (2) the construction of any

facility or facility modifications on the Easement; (3) any road or proposed road; or (4) any operation or proposed operation of City, City Lessee or City Franchisee. Grantor may also require Grantee to lower or relocate the Pipeline, equipment, facilities and appurtenances situated in the aforesaid Easement in the event the same materially interferes with or will materially interfere with (5) the City's Water, Wastewater, Storm Water and Gas divisions' ("City Utilities") facilities or (6) with any railroad or proposed railroad that would cross the Easement; provided, however, that in the case of any of (1) – (6) above, such event has been finally and unconditionally approved by Grantor and any applicable federal, state, or local governmental agency; provided, further, that Grantee shall be allowed no less than one hundred eighty (180) days to lower or relocate such Pipeline. In the event Grantor requires Grantee to lower or relocate pursuant to the provisions of this paragraph, the cost of such lowering or relocation shall be paid solely by Grantee. In the event of such relocation, Grantor must provide Grantee with an alternate easement route on the same property, if needed, at no additional cost to Grantee.

**Section 2. This section in intentionally left blank.**

**Section 3. Reservations from Conveyance.** Grantor hereby expressly excepts from this Easement conveyance and reserves to Grantor, its successors and assigns, the following:

- A. **Oil, Gas, etc.** All oil, gas and minerals, and all other mineral interests, whether metallic or nonmetallic, whether similar or dissimilar, and whether known or unknown, currently owned by Grantor in, on and under and that may be produced and saved from the Easement Property without destroying the intended purpose of this Easement.

B. **Surface Use.** Grantor retains for itself, and its successors, assigns, lessees, or other grantees, the right of full and complete enjoyment and use of the surface of the Easement Property for all legal purposes. Without limiting the foregoing, Grantor reserves the right to construct one or more roads, pipelines, utility and/or drainage crossings adjacent to and across the Easement Property at locations to be determined in Grantor's discretion after reasonable consultation with Grantee; provided such use does not unreasonably interfere with Grantee's use of the Easement Property for the purposes authorized herein.

C. **Other.** The right to grant easements and rights-of-way upon, over, under and across its property within the Easement Property and to grant rights of use, leases and easements above, below and on the surface of the Easement Property as long as such grants do not destroy the intended purpose of this Easement.

**Section 4. Term of Easement.** The initial term of this Easement is thirty (30) years beginning on the Effective Date (the "Initial Term"). The Initial Term may be extended, at Grantee's option, for successive ten (10) year terms thereafter (the "Option Term"), each option to be exercised by Grantee, no more than 6 and no less than 3 months before the end of a term, giving Grantor written notice that Grantee exercises the option for an additional ten (10) year term. If such notice of option exercise is not timely given, this Easement shall automatically expire at the end of the then current term. Notwithstanding the foregoing, this Easement shall not be extended beyond sixty (60) years after the Effective Date of this Easement.

**Section 5.** This section is intentionally omitted.

**Section 6. Limitation of Above-Ground Facilities.** Grantee shall have the right to cathodically protect the Facilities within the boundaries of the Easement Property, and to install and maintain above-ground pipeline markers, vent pipes, and cathodic protection devices and test leads within the boundaries of the Easement Property at locations mutually agreeable to the parties. Any above-ground markers or equipment authorized to be erected hereunder shall be regularly maintained and painted by Grantee. Grantee will place markers at the points where such Facilities enter or leave a public street or drainage right-of-way or other City property. Such markers must be of permanent construction bearing Grantee's name and emergency telephone number and placed on the edge of the public right-of-way.

**Section 7. Pipeline Construction.**

A. **Construction Standards.** All work proposed by Grantee to construct, repair, maintain or replace the Facilities will equal or exceed Department of Transportation Pipeline Safety Standards (Title 49, Code of Federal Regulations, Part 192 – Transportation of Natural and other Gas by Pipeline, or Part 195 – Transportation of Liquids by Pipeline – latest revision) for the transportation of all products in the Pipelines.

B. **Compliance with Laws.** In constructing, operating, maintaining, repairing, or replacing the Facilities, Grantee must comply with all applicable Federal, State, County, and City laws, resolutions and ordinances, and all amendments thereto, and secure all necessary permits from the appropriate agencies, including but not limited to, City Ordinance No. 1027, approved on March 22, 2011 and codified at Chapter 22 — BUSINESS REGULATIONS, Ingleside Code of Ordinances, ARTICLE IX. PIPELINES.

C. **Depth Limits.** Grantee shall bury the Pipelines so that the top of the Pipelines shall not be any shallower than twenty-six feet (26') from surface of ground or roadway, or such greater depth as is required by any applicable law, rule or regulation, or this Easement and as required to insure safety Grantee must notify the Texas One-Call at 1-800-245-4545 and the City for utility locations in the Easement Property at least 48 hours prior to the start of any construction.

D. **Crossing or Ditch Requirements.** Prior to any construction, laying, installation, repair, maintenance or replacement of the Facilities, Grantee must provide protection at all road crossings or ditches, by either casing, extra pipe wall thickness, concrete jacketed pipe, or other means approved by the Railroad Commission or Federal D.O.T, as applicable, and Grantee must identify the method on the construction plans.

- i) Grantee will maintain a minimum clearance of ten feet (10') between the Pipelines and any creek, stream or drainage ditch crossing the Easement Property; and
- ii) Grantee will maintain a minimum clearance of four feet (4') between the Pipelines and any then-existing improvements, including but not limited to City Utilities, pipelines, electrical lines and communication lines, crossing the Easement Property.

E. **Clearing.** Grantee shall conduct clearing operations on the Easement Property using a bull dozer and will neatly stack all cleared brush within the Easement Property. Brush piles must be stacked free of dirt, and all brush must then be removed within ninety (90) days of clearing operations to an authorized disposal site at the expense of Grantee.

F. **Excavation.** In the event of any excavation within the Easement Property, including without limitation excavation during initial construction of the Pipelines, all of the backfill material will be compacted to restore the surface of the Easement Property, as much as practical, to its original condition. In refilling any hole or ditch Grantee must compact the subsoil to at least ninety-five percent (95%) of original compaction. Furthermore, when the disturbed area is backfilled, Grantee will crown the cover appropriately to allow for natural leveling over time. Unless instructed otherwise by Grantor, Grantee will remove all excess sub-soil from Grantor's lands. After any construction, repair or removal, Grantee shall compact, loosen, or otherwise condition the topsoil to the degree of compaction of non-disturbed topsoil so that there will be no settling or compaction of soil and so that the land disturbed will be the same level as the surrounding lands which will maintain drainage previous to such work and prevent erosion. At any time and from time to time, upon request of Grantor, Grantee agrees to correct, level and restore to the original ground level any further settlement of the soil that may occur following the previous filling or leveling of the same, so as to fully restore and maintain the surface of the Easement Property to Grantor's reasonable satisfaction, and to protect the Easement Property against erosion.

G. **Fences.** Grantee will not cut or go over any fence or fences of Grantor at any time or in connection with any operations on the Easement Property, except in case of emergency or as otherwise expressly authorized by Grantor. Where the cutting of a fence is authorized, the cuts must be made at the place designated by Grantor, and Grantee agrees, prior to cutting any fence of Grantor, to brace the existing fence adequately on both sides of the proposed cut so that when the fence is cut there will be no slackening of

the wires or impairment of the structural integrity of the fence. Grantee shall promptly and fully restore any such cut fence to original condition.

H. **Boring.** The rights of the Grantee under this Easement are subordinate to all Grantor's uses for public purposes. In the construction of its Pipelines, Grantee agrees to bore under any creeks, rivers, roads, pipelines, structures, pipelines, utilities and City Utilities crossing the Easement Property in order to avoid any disturbance to such then-existing creeks, rivers, roads, pipelines, structures, pipelines, utilities and City Utilities.

i) Grantee agrees that no boring pits or receiving pits will be located on Grantor's property.

I. **Water Flow.** Grantee will perform all activities in connection with its permitted construction work so as not to unreasonably hinder or disrupt any freshwater flow, either during or upon completion of the work. No dams or diversions are to be built.

J. **Location.** Grantee shall have the right to select the exact location of the Facilities within the Easement Property, subject to the terms and conditions elsewhere in this Easement set forth. Further, Grantee shall have the right to construct, maintain and change slopes of cuts and fills to ensure proper lateral and subjacent support for and drainage for the Facilities.

K. **New Pipe.** Grantee agrees to use new pipe for installation of the Pipelines and for any replacement pipeline authorized hereunder. Such pipe shall be inspected and certified to the extent required by applicable law.

L. **Plans.** Prior to the commencement of construction of the Pipelines Grantee will furnish Grantor construction drawings, plans and specifications for same. Grantee shall



construct and maintain the Pipelines in a good and workmanlike manner and in compliance with all applicable governmental and industry standards for construction and maintenance of the same. Warning signs for the existence of the Pipelines that conform to Federal and State laws applicable to such warning signs will be posted at the required locations along the Easement Property.

M. Double Ditch Trench Construction. Grantee shall promptly back-fill all excavations with top soil on top and bottom soil on bottom and, Grantee shall use the double ditching method of trench construction whereby no less than eighteen inches (18") of the topsoil is segregated from the rest of the excavation and is used to backfill the top layers of the trench.

N. **Contamination Notice.**

- i) Grantee will immediately, notify the appropriate State and Federal agencies that regulate pipelines of the type permitted in this Easement, and no later than twenty-four (24) hours after discovery, notify Grantor, of any visible or apparent contamination discovered in the Easement Property during initial construction of a Pipeline.
- ii) Following completion of construction of each Pipeline, Grantee will immediately, notify the appropriate State and Federal agencies which regulate pipelines of the type in the Easement, and no later than twenty-four (24) hours after discovery, notify Grantor, of any visible or apparent contamination discovered by Grantee in, on, under, or adjacent to the Easement Property.
- iii) If, during or after completion of construction of a Pipeline, contamination is coming from a Pipeline, Grantee will immediately take all steps necessary to

shut down the Pipeline from which the contamination is coming, repair or replace the Pipeline, and restore the Easement Property and all other damaged land to the condition it was in prior to the discovery of the contamination. If the contamination is not coming from a Pipeline in the Easement Property, then Grantee shall cooperate to determine the source of the contamination and advise the appropriate State and Federal agencies of the occurrence.

O. **Comply with Law.** Grantee's use of the Easement herein granted and its operations in relation to it will at all times comply with all applicable laws, statutes, rules, ordinances and regulations of federal, state and local government.

P. **As Built.** Grantee shall furnish Grantor, upon completion of the installation of each Pipeline under this Easement, an as-built drawing of the location of the Pipeline and will furnish Grantor an as built drawing of any subsequent modification of the location of such Pipeline.

Q. **Coordination.** Grantee shall be responsible for coordination of any construction, maintenance and use in the Easement Property with any other existing users and easement holders in, adjacent, or near the Easement Property.

R. **Restoration.** Grantee shall promptly restore any portion of the Easement Property damaged by Grantee to its condition prior to such damage. All restoration work shall be appropriately tested at Grantee's expense. Grantor shall be promptly notified in writing of the method used and results of all tests of any such restoration work.

**Section 8. Consideration.** In consideration for the first ten (10) years of the Initial Term of this Easement, Grantee will pay to Grantor a fee in the amount of Ninety-Two Thousand, Seven Hundred Thirty-Three Dollars and 30 cents (\$92,733.30) ("Fee"), which shall be due and

payable in advance, in full, on or before the Effective Date of this Easement. The Fee is based upon the agreed price of \$990 per rod times the length of the Easement Property being 93.67 rods as depicted in attached Exhibit "A". The Fee shall be hand delivered to the City Manager, or mailed to the City in the manner prescribed in Section 25(C) of this Easement. The Fee for each successive ten (10) year term, whether it be for the Initial Term or Option Term, if applicable, shall be the greater of the following, and shall be due and payable in advance, in full, on or before the first day of each such term:

- A. an amount equal to the Fee which was payable for the immediately preceding ten (10) year term, or
- B. an amount equal to the Fee payable for the immediately preceding ten (10) year term increased in proportion to the increase in (i) United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U) Houston-Galveston-Brazoria, Texas - All Items (1982-84 = 100) (the "**Index**") for the last full calendar month before the end of the immediately preceding ten (10) year term over and above (ii) the corresponding Index figure for the first full calendar month of the immediately preceding ten (10) year term; provided that if such Index should be discontinued, such calculation shall be made by use of another reputable index selected by Grantor and provided further, that if the base period for the Index is hereafter modified, the base period used in making the foregoing calculation shall be appropriately adjusted by Grantor to reflect such modification. In the event the relevant index figure for the month referred to in (i) is not available on before the first day of the new term, Grantee shall pay, in advance, the same fee as was applicable for the immediately preceding period; however, within fifteen (15) days after Grantor gives Grantee notice of

any deficiency in Grantee's installment payment for the new term due to unavailability of such relevant Index figure, Grantee shall pay Grantor the amount of such deficiency on demand.

**Section 9. Ingress/Egress Restrictions.** Grantee's means of ingress and egress to and from the Easement Property for all authorized activities under this Easement shall be restricted to points where the Easement Property intersects the perimeter of Grantor's property or a public road, unless Grantor consents in writing to another route across its property. Subject to Grantor's written consent, Grantee shall have the right to use the access gates, if any now existing or in the future erected, at such points of intersection and the right to secure such gates by installing its own locks on such gates (provided that Grantor is immediately and at all times provided with keys and/or combinations to said locks) for the purpose of performing the activities contemplated under this Easement. Grantee's permitted activities shall be conducted only during daylight hours (excluding weekends and holidays), except in the case of an emergency requiring immediate action. Grantee shall conduct all maintenance and repair activities, including ingress and egress, solely within the Easement Property and shall not interfere with the use of the surface of lands adjoining the Easement Property for any and all activities, including, but not limited to, residential, farming, commercial and recreational activities.

**Section 10. Maintenance of Easement Property.** Grantee shall have a duty to maintain the Easement Property (other than road crossings or other facilities constructed or installed by Grantor or its designees) in good, orderly, clean condition and otherwise in accordance with this Revocable Easement.

**Section 11. Future Damages.** Grantee will remain responsible for all damages to the Easement Property or other property of Grantor on or adjacent to the Easement Property caused by Grantee or its agents, servants, employees, contractors or subcontractors in performing the activities authorized herein.

**Section 12. Default/Remedies.**

A. **Fee.** If Grantee fails to timely pay in full any Fee, or any portion thereof, required by this Easement to be paid as consideration,, Grantor may terminate this Easement on 5 days written notice to Grantee.

B. **Non-Use.** If at any time Grantee shall cease to actively use the Easement and all Pipelines therein for the purposes herein allowed for a period of twenty-four (24) consecutive months, or if Grantee shall at any time abandon this Easement or the use of the same for the purposes herein granted, this Easement shall ipso facto terminate and revert to Grantor, its successors and assigns.

C. **Violation of Law.** If Grantee is in violation of any federal, state or municipal laws, rules, regulations or codes, including but not limited to the Department of Transportation or Railroad Commission laws, rules, or regulations, or City ordinances, Grantee will be given written notice of the violation and shall have thirty (30) days from its receipt of such notice to commence to cure the stated violations. If Grantee has not commenced to cure the identified violations within such thirty (30) day cure period, this Easement may be revoked and terminated by Grantor; provided however that if Grantee has commenced to cure the stated violation but has not completed same with the thirty (30) day cure period, Grantee may proceed to cure such violation and this Easement shall

not be revoked so long as Grantee thereafter uses commercially reasonable and diligent efforts to prosecute the curing of same to expeditious completion.

**D. Removal upon Expiration, Abandonment or Termination.** Within ninety (90) days after expiration, abandonment or termination of this Easement, Grantor shall notify Grantee in writing as to whether or not Grantee will be obligated to remove its Facilities, or portions thereof. Such determination shall be made in Grantor's sole and absolute discretion. If Grantor fails to give such notice, Grantor shall be deemed to have timely given written notice to Grantee that Grantee must remove any Facilities on the surface and abandon in place the Pipelines. To the extent Grantor requires the removal of all or any portion of such Facilities, Grantee shall remove same within one hundred twenty (120) days after the date Grantor gives notice and restore the Easement Property to substantially the same condition in which same existed prior to the existence of the Facilities. In the event Grantee fails to remove the said Facilities within the above-described time period, Grantor may either declare the termination of Grantee's interest in the Facilities and all of Grantee's interest therein shall thereupon terminate, or the Grantor may cause the Facilities, or any part thereof, to be removed and disposed of, and the lands of the Grantor restored, all at the cost of Grantee which shall be due and payable on demand. To the extent that Grantee is to abandon its Pipelines in place hereunder, Grantee shall purge each Pipeline of all liquids and other substances, fill each Pipeline with inert gas, cap each Pipeline, and transfer ownership of the Pipelines to Grantor.

**GRANTEE SHALL INDEMNIFY GRANTOR FROM INDEMNIFIED CLAIMS MADE REGARDING THE PIPELINES, INCLUDING BUT NOT LIMITED TO, AFTER GRANTEE HAS ABANDONED SAID PIPELINES AND TRANSFERRED**

OWNERSHIP OF ABANDONED PIPELINES TO GRANTOR; PROVIDED, HOWEVER, THAT SUCH INDEMNITY WILL NOT BE ENFORCED TO THE EXTENT THAT A COURT OF COMPETENT JURISDICTION HOLDS IN A FINAL JUDGMENT THAT THE APPLICABLE CLAIM AGAINST GRANTEE WAS CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF THE INDEMNIFIED PERSONS.

E. THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS EASEMENT.

F. **Refund.** Grantee shall not be entitled, in the event this Easement expires or is terminated by Grantor in accordance with this Easement, to refund of any portion of a Fee previously paid as consideration for any term.

G. **Cumulative Remedies.** The remedies herein expressed are in addition to not in lieu of or to the exclusion of any other remedy provided in this Easement, or at law or in equity, all such remedies being cumulative.

**Section 13. Acknowledgment of Expiration/Termination.** Upon expiration or termination of this Easement for any reason, Grantee will, on request of Grantor, execute and deliver to Grantor a document in recordable form and otherwise in form and substance approved by Grantor acknowledging termination and/or expiration. Grantor may record said document in the public records of the county in which the Easement Property is located. In the event of a termination or expiration of this Easement, if Grantee fails to deliver a document complying with the requirements of this section within sixty (60) days after Grantor's request therefor, Grantee shall pay Grantor an amount equal to \$500 per day, beginning with the day Grantor made the request

and continuing until such document has been executed and delivered to Grantor. It is agreed that actual damages to Grantor for Grantee's failure to deliver such document are difficult to ascertain with any certainty, and that the payments herein provided are a reasonable estimate of such damages and shall be considered liquidated damages and not a penalty. The \$500 per day shall be increased on the first day of each new ten (10) year term in accordance with the formula provided above for Fee increases.

**Section 14. Assignment.** The rights hereby granted to Grantee are personal and shall not be assigned except as set forth in this Section 14. Grantee may assign its rights and interest in the Easement (a "**Permitted Assignment**") to any entity whose ultimate parent company is Occidental Petroleum Corporation (such entity, an "**Affiliate**"). Grantee shall not assign its rights and interests in the Easement to an entity that is not an Affiliate without the prior written consent of Grantor, which consent will not be unreasonably withheld. Grantor's consent to any non-Affiliate assignment shall not constitute consent to any subsequent assignment to a non-Affiliate. Any assignment other than a Permitted Assignment made without Grantor's prior written consent shall be void. Grantee shall furnish Grantor a copy of any assignment made pursuant to this Section 14, with the recording data reflected thereon, if recorded. Assignment by Grantee of this Easement shall not relieve the assigning party of any obligations which have accrued under this Easement prior to such assignment. Any assignee of Grantee shall, by acceptance of such assignment, be bound by all terms and provisions hereof. Grantor's rights hereunder are freely assignable.

**Section 15. Warranty of Title.** Grantor hereby warrants and shall forever defend the Easement to Grantee against anyone claiming or to claim the Easement or any part thereof, by, through or under Grantor, but not otherwise, provided that this Easement is delivered by Grantor and



accepted by Grantee, subject to the Exceptions to Warranty hereinafter set forth, the Reservations from Conveyance set forth elsewhere in this Easement, and all other sections of this Easement.

A. Exceptions to Warranty:

(1) Existing easements, rights-of-way, and prescriptive rights, whether of record or not; (2) all recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and all other instruments that, directly or indirectly, affect the Easement Property; (3) existing rights of adjoining owners in any fences; (4) any discrepancies, conflicts, or shortages in area or boundary lines; (5) any encroachments or overlapping of improvements, easements or other encumbrances; (6) all rights, obligations, and other matters arising from and existing by reason of any San Patricio County water or utility district; and (7) all matters that may be apparent from a visual inspection of the Easement Property.

**Section 16. Liens.** If a contractor, subcontractor or other person files or asserts a valid lien claim against Grantee's interest in the Easement Property, or asserts any lien claim against Grantor's surface, mineral or royalty interests in the Easement Property, as a result of Grantee's operations on the Easement Property, Grantee shall cause the lien to be released within 30 days of the filing of the lien claim; provided, however, if Grantee cannot cause the lien to be released within such 30 day period, but commences such efforts within such 30 day period and thereafter pursues the release of such lien in good faith, then such 30 day period shall be extended so long as reasonably necessary to permit Grantee to obtain the release of such lien.

**Section 17. Right to Information.** In the event Grantee conducts any inspections, investigations, or tests on the Easement Property in connection with any clean-up or remediation

activities arising out of a leak, suspected leak or mechanical failure of the Facilities, or as a result of the failure of the Facilities to be in compliance with applicable laws, rules, ordinances or regulations (collectively, the "Grantee Inspections"), then upon the request of Grantor, Grantee will furnish Grantor a copy of the results of such Grantee Inspections (the "Inspection Results").

**Section 18. "As-Is" Condition.**

THE EASEMENT IS GRANTED AND CONVEYED TO AND ACCEPTED BY GRANTEE IN ITS PRESENT CONDITION, AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, OTHER THAN THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT FOR THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN, THIS EASEMENT IS GRANTED AND CONVEYED TO AND ACCEPTED BY GRANTEE WITHOUT ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, AGREEMENT, STATEMENT OR EXPRESSION OF OPINION (OR LACK THEREOF) OF OR WITH RESPECT TO: (1) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (2) THE SOIL CONDITIONS, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS OF THE PROPERTY OR WHICH AFFECT THE PROPERTY; (3) ANY CONDITIONS RELATING TO OR ARISING FROM ANY ARCHEOLOGICAL OR HISTORIC SITE,

CEMETERY, BURIAL GROUND, ENDANGERED SPECIES HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THE PROPERTY; (4) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE PROPERTY; (5) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (6) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY GRANTOR WHATSOEVER. GRANTEE HAS MADE ITS OWN PHYSICAL INSPECTION OF THE PROPERTY AND HAS SATISFIED ITSELF AS TO THE CONDITION OF THE PROPERTY FOR GRANTEE'S INTENDED USE. GRANTOR MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE NATURE OR QUANTITY OF THE INTERESTS IT OWNS IN ANY OIL, GAS AND OTHER MINERALS.

GRANTEE RELEASES GRANTOR FROM LIABILITY FOR ANY LATENT DEFECTS IN, ON, ABOUT, ADJACENT, OR UNDER THE EASEMENT PROPERTY AS OF THE EFFECTIVE DATE HEREOF AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING GRANTOR'S PROPERTY IN, ON, ABOUT, ADJACENT, OR UNDER THE EASEMENT PROPERTY AS OF THE EFFECTIVE DATE HEREOF, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE.

GRANTEE RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING GRANTOR'S PROPERTY IN, ON, ABOUT, ADJACENT, OR UNDER THE EASEMENT PROPERTY AS OF THE EFFECTIVE DATE HEREOF ARISING AS THE RESULT OF GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF GRANTOR'S OFFICERS, AGENTS, EMPLOYEES, AND/OR REPRESENTATIVES. GRANTEE RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING GRANTOR'S PROPERTY IN, ON, ABOUT, ADJACENT, OR UNDER THE EASEMENT PROPERTY AS OF THE EFFECTIVE DATE HEREOF ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON GRANTOR IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING GRANTOR'S PROPERTY IN, ON, ABOUT, ADJACENT, OR UNDER THE EASEMENT PROPERTY.

**SECTION 19. INDEMNITY.**

A. GRANTEE SHALL DEFEND (INCLUDING, BUT NOT LIMITED TO, LITIGATION, ARBITRATION, MEDIATION, FEES AND EXPENSES), INDEMNIFY, PAY AND PROTECT, HOLD HARMLESS AND SAVE THE GRANTOR, ITS EMPLOYEES, OFFICERS, COUNCILPERSONS, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (THE "INDEMNIFIED PERSONS") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUIT, LOSS, DAMAGE, INJURY OR LIABILITY, INCLUDING DEATH OF, PERSONS OR DAMAGE TO PROPERTY OF

**OTHERS, INCLUDING COSTS AND EXPENSES INCIDENT THERETO, RESULTING FROM, ARISING OUT OF, OR ALLEGED TO HAVE ARISEN OUT OF OR RESULTED FROM, IN WHOLE OR IN PART, ANY OF THE FOLLOWING MATTERS:**

- 1) GRANTEE'S, ITS AGENTS, CONTRACTORS, EMPLOYEES, OWNERS, INVITEES, OR LICENSEES (COLLECTIVELY "GRANTEE PARTIES") CONSTRUCTION AND OPERATIONS ON THE EASEMENT PROPERTY;**
- 2) GRANTEE'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS EASEMENT;**
- 3) ANY BODILY INJURY TO OR DEATH OF ANY EMPLOYEE OF THE GRANTEE PARTIES OCCURRING IN CONNECTION WITH CONSTRUCTING, INSTALLING, MAINTAINING OR REMOVING THE PIPELINE; OR**
- 4) ANY ACT, OMISSION, WILLFUL MISCONDUCT, STRICT LIABILITY, BREACH OF WARRANTY, EXPRESS OR IMPLIED, OR VIOLATION OF ANY LAWS, ORDINANCES, RULES, REGULATIONS, OR CODES, NOW OR HEREAFTER EXISTING AND APPLICABLE TO GRANTEE AND ITS OPERATIONS UNDER THIS EASEMENT , OF OR BY ANY GRANTEE PARTY, INCLUDING THE SOLE, JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF ANY GRANTEE PARTY IN CONNECTION WITH OR PERTAINING TO THIS EASEMENT; AND**

- 5) ANY CIVIL FINES, PENALTIES, EXPENSES, COSTS OF CLEANUP, COSTS OF REMOVAL OR MODIFICATIONS OF FACILITIES PLACED IN OR ON THE EASEMENT PROPERTY, BY OR FOR GRANTEE, BROUGHT BY ANY AND ALL PERSONS (INCLUDING, BUT NOT LIMITED TO, SURFACE OWNER'S' AND OPERATOR'S EMPLOYEES, AGENTS, OR REPRESENTATIVES AND ANY PRIVATE CITIZENS, PERSONS, ORGANIZATIONS, AND ANY AGENCY, BRANCH OR REPRESENTATIVE OF FEDERAL, STATE, OR LOCAL GOVERNMENT) ON ACCOUNT OF CONTAMINATION OF THE EASEMENT PROPERTY OR OTHER LANDS (INCLUDING SOIL, SURFACE WATER OR GROUND WATER) RESULTING FROM, ARISING OUT OF, OR CAUSED BY (i) THE PRESENCE, DISPOSAL, OR RELEASE OF ANY MATERIAL OF ANY KIND IN, ON OR UNDER THE LAND BY GRANTEE, ITS AGENTS, EMPLOYEES, CONTRACTORS, LICENSEES OR INVITEES, OR (ii) CAUSED BY OR CONNECTED WITH ACTS OR OMISSIONS OF GRANTEE, ITS AGENTS, EMPLOYEES, CONTRACTORS, LICENSEES OR INVITEES WITH REGARD TO ITS USE OF AND OPERATIONS IN, ON, ABOUT OR ADJACENT TO THE EASEMENT PROPERTY (COLLECTIVELY THE "INDEMNIFIED CLAIMS").

B. THE INDEMNITIES, WAIVERS AND OBLIGATION TO DEFEND SHALL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW FOR THE BENEFIT OF THE INDEMNIFIED PERSONS

THEREOF, REGARDLESS OF ANY EXTRAORDINARY SHIFTING OF RISKS, AND EVEN IF THE CLAIMS, DEMANDS, CAUSES OF ACTION, SUIT, LOSS, DAMAGE, INJURY IS CAUSED BY THE JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF SUCH INDEMNIFIED PERSONS, AND REGARDLESS OF WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED UPON OR ALLEGED AGAINST SUCH INDEMNIFIED PERSONS; PROVIDED, HOWEVER, THAT AN INDEMNITY WILL NOT BE ENFORCED TO THE EXTENT THAT A COURT OF COMPETENT JURISDICTION HOLDS IN A FINAL JUDGMENT THAT THE APPLICABLE CLAIM AGAINST SUCH INDEMNIFIED PERSONS WAS CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF SUCH INDEMNIFIED PERSONS.

C. IN CLAIMS AGAINST ANY INDEMNIFIED PERSON BY OR FOR AN EMPLOYEE OF A GRANTEE PARTY, THE GRANTEE'S INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED BY A LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE GRANTEE PARTY UNDER WORKERS' OR WORKMEN'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. IF AN ACTION FOR DAMAGES IS BROUGHT BY AN INJURED EMPLOYEE OF GRANTEE, A LEGAL BENEFICIARY, OR AN INSURANCE CARRIER AGAINST AN INDEMNIFIED PERSON LIABLE TO PAY DAMAGES FOR THE INJURY OR DEATH OF SUCH EMPLOYEE UNDER CHAPTER 417 (THIRD-PARTY LIABILITY),

TEXAS LABOR CODE, THAT RESULTS IN A JUDGMENT AGAINST THE INDEMNIFIED PERSON OR A SETTLEMENT BY THE INDEMNIFIED PERSON, GRANTEE EXPRESSLY AGREES TO REIMBURSE AND HOLD HARMLESS THE INDEMNIFIED PERSON FOR THE DAMAGES BASED ON SUCH JUDGMENT OR SETTLEMENT.

D. IT IS THE INTENT OF THE PARTIES TO THIS REVOCABLE EASEMENT AGREEMENT THAT ALL INDEMNITY OBLIGATIONS AND LIABILITIES CONTRACTED FOR IN THIS REVOCABLE EASEMENT AGREEMENT BE WITHOUT MONETARY LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF (INCLUDING, BUT NOT LIMITED TO, PRE-EXISTING CONDITIONS ON GRANTOR'S PROPERTY OR AS THE RESULT OF AN INDEMNIFICATION AGREEMENT WITH A THIRD PARTY), AND WILL NOT BE LIMITED BY DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT. THE GRANTEE'S INDEMNITY HEREUNDER INCLUDES, BUT IS NOT LIMITED TO, ANY CLAIMS AND LOSSES RESULTING FROM A VIOLATION BY A GRANTEE PARTY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 ("CERCLA"), 42, U.S.C. SECTION 9601 ET SEQ; THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 ("RCRA"), 42 U.S.C. SECTION 6901 ET SEQ; THE HAZARDOUS MATERIALS TRANSPORTATION ACT, 49 U.S.C. SECTION 5101 ET SEQ; THE CLEAN AIR ACT AND AMENDMENTS OF 1990, 41 U.S.C. SECTION 7401 ET SEQ; THE CLEAN WATER ACT OF 1977, 33 U.S.C. SECTION 1251 ET SEQ; THE OIL



POLLUTION ACT OF 1990, 33 U.S.C. SECTION 2701 ET SEQ; THE TOXIC SUBSTANCES CONTROL ACT, 15 U.S.C. SECTION 2606 THE TEXAS WATER CODE; THE TEXAS SOLID WASTE DISPOSAL ACT, CHAPTER 361, TEXAS HEALTH AND SAFETY CODE; THE TEXAS CLEAN AIR ACT, CHAPTER 382, TEXAS HEALTH AND SAFETY CODE; THE OIL SPILL PREVENTION ACT OF 1991, CHAPTER 40, TEXAS NATURAL RESOURCE CODE, AND CHAPTER 26, TEXAS WATER CODE; AND THE TEXAS WATER QUALITY ACT, CHAPTER 26, TEXAS WATER CODE; CITY'S TARIFFS, RULES AND REGULATIONS (COLLECTIVELY, "ENVIRONMENTAL LAWS, CITY'S TARIFFS AND RULES AND REGULATIONS") IN EFFECT DURING THE TERM OF THIS EASEMENT AND TO THE EXTENT APPLICABLE TO GRANTEE AND ITS OPERATIONS HEREUNDER, AND ANY AND ALL MATTERS ARISING OUT OF ANY ACT, OMISSION, EVENT OR CIRCUMSTANCE EXISTING OR OCCURRING DURING THE TERM OF THIS EASEMENT AGREEMENT, REGARDLESS OF WHETHER THE ACT, OMISSION, EVENT OR CIRCUMSTANCE CONSTITUTED A VIOLATION OF ANY OF THE ENVIRONMENTAL LAWS, CITY'S TARIFFS AND RULES AND REGULATIONS AT THE TIME OF ITS EXISTENCE OR OCCURRENCE.

E. IF ANY ACTION OR PROCEEDING IS BROUGHT AGAINST AN INDEMNIFIED PERSON BY REASON OF ANY CLAIMS, THE INDEMNIFIED PERSON WILL BE REPRESENTED BY ITS GENERAL COUNSEL, OR ANOTHER ATTORNEY SELECTED BY THE INDEMNIFIED PERSON AND

APPROVED BY GRANTEE, WHICH APPROVAL WILL NOT BE UNREASONABLY WITHHELD.

F. IF GRANTEE SHOULD FAIL OR REFUSE, AFTER PRIOR WRITTEN NOTICE TO GRANTEE THAT AN INDEMNIFIED PERSON INTENDS TO MAKE A SETTLEMENT OF AN INDEMNIFIED CLAIM, TO PARTICIPATE IN THE SETTLEMENT OF SUCH INDEMNIFIED CLAIM, THEN THE INDEMNIFIED PERSON MAY SETTLE WITH THE CLAIMANT WITHOUT PREJUDICE TO THE INDEMNIFIED PERSON'S INDEMNITY RIGHTS SET FORTH HEREIN, AND A SETTLEMENT AFTER SUCH NOTICE TO GRANTEE WILL CONSTITUTE A SETTLEMENT OF THE PROPORTIONATE FAULT, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, OF BOTH GRANTEE AND THE INDEMNIFIED PERSON, WHICH SETTLEMENT MAY LATER BE APPORTIONED BETWEEN INDEMNIFIED PERSON AND GRANTEE.

G. GRANTEE AGREES TO SUPPORT ITS OBLIGATIONS TO INDEMNIFY AND DEFEND THE INDEMNIFIED PERSONS BY THE PURCHASE OF INSURANCE, INCLUDING CONTRACTUALLY ASSUMED LIABILITY COVERAGE.

THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS EASEMENT.

SECTION 20. RELEASE/WAIVER. GRANTEE (ON BEHALF OF ITSELF AND ANY PARTY HOLDING THROUGH RIGHT OF SUBROGATION) WAIVES AND

RELEASES GRANTOR, ITS OFFICERS, COUNCILPERSONS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS ("RELEASED PERSONS") FROM ALL LIABILITY FOR ANY DAMAGE OR INJURY GRANTEE, GRANTEE'S SUCCESSORS OR ASSIGNS, OR ANY EMPLOYEES, AGENTS, INVITEES, OR CONTRACTORS OF ANY OF SUCH PERSONS, MAY SUSTAIN FROM ANY AND ALL SOURCES OR CAUSES, INCLUDING ANY LOSS OR DAMAGE THAT MAY OCCUR TO THE EASEMENT PROPERTY AND TO ALL PROPERTY OF GRANTEE, WHETHER REAL, PERSONAL OR MIXED, EXCEPT TO THE EXTENT SUCH DAMAGE OR INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A RELEASED PERSON.

THIS SECTION SHALL SURVIVE THE TERMINATION OR RELEASE OF THIS EASEMENT IN WHOLE OR IN PART.

**Section 21. Insurance.** Without limiting the indemnity obligations or liabilities of Grantee, or its insurers, provided herein, Grantee agrees at all times this Easement is in effect to carry and maintain at its sole expense policies of insurance (the "**Policies**") of the types and in the minimum amounts as follows:

- A. For all its employees engaged in performing work, workers' compensation required by the Texas Workers' Compensation Code, and Employer's Liability insurance with limits of at least \$500,000.00, or such greater amount as from time to time may be required by law, for each employee for accident and disease, or such similar insurance which is in accordance with state and federal law applicable to said employees.

B. Commercial General Liability (CGL) coverage with policy limits of at least \$1,000,000.00 per occurrence and \$2,000,000 aggregate. It shall cover contractual liability and environmental pollution, liability from premises, operations, independent contractors, products-completed operations, personal injury, death and liability assumed by contract. If said insurance contains a general aggregate limit, it shall apply separately to the Easement.

C. Business Auto Liability coverage for all owned and non-owned vehicles, with a policy limit of \$1,000,000 (Combined Single Limit). Such business auto liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos), and shall be endorsed to provide contractual liability coverage.

D. Environmental pollution legal liability for sudden, accidental, or gradual environmental pollution including cleanup and defense costs for premises and operations including pollution of any body of water with limits of not less than \$5,000,000.00 per occurrence.

E. Umbrella liability coverage limits of not less than \$25,000,000.00 over and above the underlying primary coverage limits stated above in this Section.

F. The minimum insurance protection amounts set forth in the Policies shall be increased from time to time upon sixty (60) days' prior written notice from Grantor to an amount which is commercially reasonable at the time.

G. Grantee shall deliver to Grantor, prior to the commencement of any work allowed to Grantee under the Easement, as proof of the insurance required of Grantee, a certificate or certificates of insurance (and the required endorsements shall be attached to the certificate or certificates of insurance) describing the Policies, which certificates must be

acceptable, in form and content, to Grantor, or (2) to the extent that Grantee is self-insured, a letter of self-insurance addressed to Grantor by Grantee. Only with respect to and to the extent of the liabilities and obligations assumed by Grantee under this Easement, each of the Policies (except for Workers' Compensation and Employee's Liability insurance) will be endorsed to (a) name Grantor, its Councilpersons, officers, officials, employees and agents as additional insureds, (b) provide that it will not be suspended, voided, canceled or reduced in coverage or limits without fifteen (15) days' prior written notice to Grantor, and (c) provide that, notwithstanding any language in any policy of insurance held by Grantor ("**Grantor Insurance**") to the effect that the Grantor Insurance is primary, the policy or policies held by Grantee are primary coverage and the Grantor Insurance is non-contributory so that Grantor Insurance will not share with the Policies, and (d) shall include a waiver of subrogation in favor of Grantor and its trustees, officers, directors, employees, tenants, agents, successors and assigns.

H. Timely renewal certificates must be provided as the coverage renews. Grantee shall deliver to Grantor such certificates of insurance at least fifteen (15) days prior to the expiration date of each of the Policies.

I. The deductible or self-insured retention for each of the Policies must be stated in the certificate of insurance provided to Grantor if either exceeds \$50,000.00.

J. The company writing each of the Policies must be licensed to do business in the State of Texas and must be acceptable to Grantor and possess a current rating with A.M. Best Company of at least A.

K. Grantee will not use or occupy the Easement Property, permit the Easement Property to be used or occupied, nor do or permit anything to be done in or on the

Easement Property in a manner which would (i) in any way make void or voidable any insurance then in force with respect thereto; (ii) make it impossible to obtain the insurance required to be furnished by Grantee thereunder, (iii) constitute a public or private nuisance; or (iv) violate any applicable law, ordinance, rule or regulation of any governmental authority.

L. If Grantee neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Grantor may, but is not required, to procure such insurance at Grantee's expense, and Grantor is entitled to reimbursement from Grantee on within thirty (30) days after receipt of written demand for all amounts spent to procure and maintain the insurance, with interest on such expense at a rate of 10% annually from the date Grantee receives City's notice of payment commencing after such 30 day period until reimbursement.

M. Grantee shall furnish Grantor with copies of all Policies required herein, and will not alter or cancel same without the Grantor's prior written consent.

**Section 22. Hazardous Substances.** As used in this Easement, the term, "**Hazardous Substances**" means any substance defined or identified as a hazardous, extra hazardous or toxic substance, waste or material under any applicable federal, state or local statute, regulation or ordinance. "**Remedial Work**" is defined as any site investigation or monitoring, any cleanup, containment, remedial, removal, or restoration work performed in response to any Hazardous Substances placed or released thereon by Grantee, and any federal, state or local governmental authority or private attorney general action, or pursuant to any federal, state or local statute, rule, regulation or other laws. Grantee agrees (1) to remove from the Easement Property covered by this Easement or any other lands owned by Grantor any Hazardous Substances placed or

released thereon by Grantee, (2) to perform Remedial Work where the need therefore arises in connection with Grantee's operations or activities on the Easement Property, and (3) to comply in all respects with all federal, state and local governmental laws and regulations governing operations by Grantee and Remedial Work on or associated with this Easement. Such Remedial Work shall be performed by one or more contractors selected by Grantee and approved in advance by Grantor, and under the supervision of a consulting engineer selected by Grantee and approved in advance by Grantor. All reasonable costs and expenses of Remedial Work made necessary by Grantee's operations shall be paid by Grantee, including, without limitation, the charges of such contractors and/or the consulting engineer. If Grantee shall fail to timely commence or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Grantor may, but shall not be required to, cause such Remedial Work to be performed. Grantee promises to notify Grantor of any claim or other action by any governmental agency or other third party brought to Grantee's attention involving the actual or alleged existence of Hazardous Substances on the Easement Property covered by this Easement, or on Grantor's adjoining property, and to provide Grantor with copies of (1) any notice of any release of Hazardous Substances given to Grantee pursuant to any law or regulation, and (2) any report of and response to any such incident. In addition to Section 19 of this Easement, GRANTEE AGREES TO INDEMNIFY, PAY AND PROTECT, DEFEND, HOLD HARMLESS AND SAVE GRANTOR, GRANTOR'S AGENTS, EMPLOYEES AND REPRESENTATIVES, HARMLESS FROM ANY AND ALL CLAIMS, LIABILITIES, FEES AND EXPENSES OF ANY KIND THAT ARISE FROM THE ACTUAL OR ALLEGED PRESENCE OR RELEASE OF ANY HAZARDOUS MATERIAL IN, ON, ABOUT, ADJACENT, OR UNDER GRANTOR'S PROPERTY IN CONNECTION WITH GRANTEE'S OPERATIONS ON THE

EASEMENT PROPERTY. THE INDEMNIFICATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL REASONABLY NECESSARY COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES IN CONNECTION WITH ANY REMEDIAL WORK WHEN PERFORMED BY GRANTOR OR ANY THIRD PARTY IN RESPONSE TO ANY HAZARDOUS SUBSTANCES PLACED OR RELEASED THEREON BY GRANTEE, AND ANY FEDERAL, STATE OR LOCAL GOVERNMENT AUTHORITY, LAWS OR REGULATIONS, DUE AND PAYABLE UPON DEMAND THEREFOR BY GRANTOR. GRANTOR SHALL HAVE THE RIGHT TO SELECT AND DIRECT THE DEFENSE OF ANY THIRD PARTY CLAIMS.

**Section 23. Protection of Surface.** Grantee will repair, maintain and take good care of the Easement Property, make all reasonable repairs thereto and maintain and keep the Easement Property in good order, repair, and condition in all of Grantee's operations on the Easement Property and in all travel across Grantor's property in accessing the Easement Property in order to prevent interference or interruption of the residential and commercial activities of the development surrounding the Easement Property. Grantor shall have no obligation to maintain or repair the Easement Property. Grantee shall not allow any placement, spill, seepage or flow of oil, saltwater, Hazardous Substances or other deleterious substances in, on or under the surface of the Easement Property or any other lands owned by Grantor or on any other about or adjacent lands, and will not permit the same to run or be placed into any surface water tank, water well, creek, or ravine on the Easement Property, nor to penetrate, seep flow or be injected into any subsurface fresh water stratum, but will contain and dispose of the substances in keeping with applicable governmental rules and regulations and shall take all necessary action to repair, restore and return the Easement Property and or any other damaged lands owned by Grantor or



on any other damaged about or adjacent lands to its original condition that existed at the inception of this Easement.

**Section 24. No Hunting or Fishing.** This Easement does not cover or include any right or privilege of hunting on the Easement Property, or fishing on the Easement Property, or any recreational or other use of the Easement not specifically authorized herein. No equipment of any nature other than the equipment necessary to conduct the activities contemplated in this Easement shall be brought onto the Easement Property. Grantee agrees that none of Grantee's officers, agents, servants, employees, representatives or contractors will bring any dog, firearm, fishing tackle, camera (except as necessary for documenting the integrity of the Facilities), alcoholic beverages or illegal drugs or substances upon the Easement Property and will not fire any weapon or firearm or consume alcoholic beverages or illegal drugs or substances thereon. Grantee shall apprise or cause to be apprised every contractor, subcontractor, employee, agent or representative who enters upon the Easement Property of the provisions of this Easement pertaining to prohibitions against fishing, hunting and vehicle access, and surface use and protection, prior to their entry upon the Easement Property. If any person shall violate the provisions of this Section 24, such person shall no longer have any right to go on, or to be on, the Easement Property, and if such person shall go on or be on the Easement Property, he shall be a trespasser and subject to prosecution under the trespass laws of the State of Texas. At all times while on the Easement Property, Grantee's officers, agents, employees, representatives and contractors must carry such identification as Grantor shall reasonably require, and may be required to place such identifying marks on any vehicles brought by them upon the Easement Property as Grantor may reasonably require. Any person on the Easement Property without such identification may be required to leave the premises immediately. Grantor and its duly

authorized representatives shall have the right at all reasonable times and at such party's own expense to search vehicles when entering or at any time once upon the Easement Property for the purpose of ascertaining that no prohibited articles are being brought on to the premises.

**Section 25. Miscellaneous.**

A. **Choice of Law.** This Easement shall be governed by and construed under the Laws of the State of Texas, without regard to its conflicts of law principles. Venue for any actions arising under this Easement shall be in San Patricio County, Texas.

B. **Payments.** All payments required under this Easement to be made to Grantor shall be paid directly to Grantor.

C. **Notices.** All notices, demands, requests and other communications required or permitted to be given or made upon either party shall be in writing and shall be delivered personally, or given by registered, certified or regular mail (postage prepaid), or reliable overnight delivery service (fees prepaid), in each case addressed to the party to whom such notice is directed at the address specified below, unless such address is changed by notice given as specified herein. All notices delivered by certified or registered mail pursuant hereto shall be deemed effective the third day after deposit in the United States mail. All notices delivered in any other manner shall be deemed effective upon the receipt by the party entitled thereto. All notices, demands and requests to be sent to the parties shall be sent or made at the following addresses:

If to Grantor:	<b>City of Ingleside</b>
	P. O. Box 400
	Ingleside, TX 78362
	Attn: City Manager

If to Grantee:                   **Oxy Ingleside Energy Center, LLC**  
5 Greenway Plaza, Suite 110  
Houston, Texas 77046-0521  
Attn: Kevin L. Pilkington

D.     **Attorneys' Fees and Expenses.** Should either party resort to legal action to enforce any of its rights under this Easement, the prevailing party in any such dispute shall be entitled to recover from the other party reasonable attorneys' fees, court costs, expert fees and all other reasonable expenses incurred in or related to such action.

E.     **Binding on Successors and Assigns.** This Easement, and the rights herein granted together with the obligations herein imposed, are covenants running with the land and shall be binding upon and shall inure to the benefit of the parties hereto, their successors, and permitted assigns. The masculine pronoun, as used herein, shall include the feminine and neuter, and vice versa; and, when appropriate, the singular shall include the plural, and vice versa.

F.     **Notice of Operations.**

- i) At least forty-eight (48) hours prior to commencing any construction or excavation activities on the Easement Property, Grantee shall notify Grantor in writing of the commencement of such operations. Such notice shall state Grantee's intentions to enter Grantor's property, the date of such entry, and the approximate duration of the activities for which the notice is provided.
- ii) Additionally, prior to any subsequent entry onto the Easement Property, Grantee shall reasonably notify Grantor of such operations, unless prior notice cannot be given due to emergency in which case such notice will be given as soon as reasonably possible.

iii) Grantee must verify depth and locations of City Utilities, and all improvements owned or operated by a franchise or licensee of the City that were in place prior to the Facilities installed under this Easement (**"Franchisees' Preexisting Improvements"**) in or near the Easement Property at least forty-eight (48) hours prior to commencing any routine construction or repair work, other than bona fide emergency repairs which must be reported to the City and reported to the appropriate the representative of a City franchisee or licensee (**"Franchisee's Representative"**) that has improvements within two feet (2') of the Facilities as soon as reasonably possible. During routine installation, maintenance, or repair work Grantee will contact each Franchisee's Representative within a reasonable time of Grantee's knowledge of the need for repairs, so as to verify depths, locations, and construction or repair work prior to the commencement of such work.

G. **Designation of Agent During Construction Operations.** Prior to the commencement of construction operations, Grantee shall designate an agent (field supervisor) for the purposes of all communications with Grantor. Grantee will provide Grantor with means by which to communicate with such agent at all times (cell phone number, pager, etc.). Any communication by Grantor to such agent during the course of operations shall be deemed to be communication with Grantee for all purposes under this Easement. Upon written notice from Grantee, Grantor shall designate as Grantor's primary representative for communications with Grantee during construction operations.

H. **Multiple Counterparts.** This Easement may be executed in multiple counterparts, all of which shall be construed together as an original instrument to the same extent and with like effect as though all the parties hereto had executed each counterpart. The parties specifically agree that the execution and acknowledgment pages from the several counterparts may be aggregated into one counterpart for recordation and other purposes.

I. **Headings.** The headings of Sections and paragraphs in this Easement are for convenience only, and shall not be considered a part of this Easement or considered in interpretation or construction of any provision of this Easement.

J. **Savings.** In the event any one or more covenants, clauses or provisions of this Easement shall be held invalid or illegal, such invalidity or unenforceability shall not affect any other provisions of this Easement.

K. **Time.** Time is of the essence with respect to all obligations under this Easement. All deadlines set out herein shall be strictly construed without considering weekends or legal holidays.

L. **Entire Agreement.** This Easement represents the entire understanding and agreement between Grantor and Grantee with regard to the subject matter contained herein, and shall supersede and replace all prior agreements, both oral and written, between the parties with respect to such subject matter. This Easement may be amended only by a subsequent written instrument executed by both Grantor and Grantee.

M. **Waiver of Default.** It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any

remedies set forth in this Easement does not preclude pursuit of other remedies in this Easement or provided by law.

N. **Further Assurances.** Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this Easement and all obligations and transactions contemplated by this Easement.

O. **Time.** Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

P. **Relationship of Parties.** Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between them.

Q. **Taxes.** Grantee agrees to timely pay all real property taxes which may be assessed or levied by any lawful authority against the Easement Property.

R. **Repairs to City's Improvements or Franchisees' Preexisting Improvements.** Grantee will repair, or cause to be repaired, any damage its construction, operation, repair, relocation, replacement or maintenance of the Facilities causes to a City street, sanitary sewer, storm sewer, gas pipeline, drainage facility, or to a Franchisees' Preexisting Improvements if the City improvements or Franchisees' Preexisting Improvements were in place prior to Grantee's initial installation of the Facilities.

S.     **Effective Date.** The Effective Date of this Easement is the date it is signed by the last party to sign same.

SIGNED on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Grantor.

**GRANTOR:**

**City of Ingleside**

By: \_\_\_\_\_

Name: Jim Gray

Title: City Manager

SIGNED on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Grantee.

**GRANTEE:**

**Oxy Ingleside Energy Center, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGEMENTS**

STATE OF TEXAS §

COUNTY OF SAN PATRICIO §

This instrument was signed and acknowledged before me this the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Jim Gray, City Manager, on behalf of said city.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This instrument was signed and acknowledged before me this the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, \_\_\_\_\_ of **Oxy Ingleside Energy Center, LLC**, a Delaware limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public, State of Texas

**AFTER RECORDING RETURN TO:**

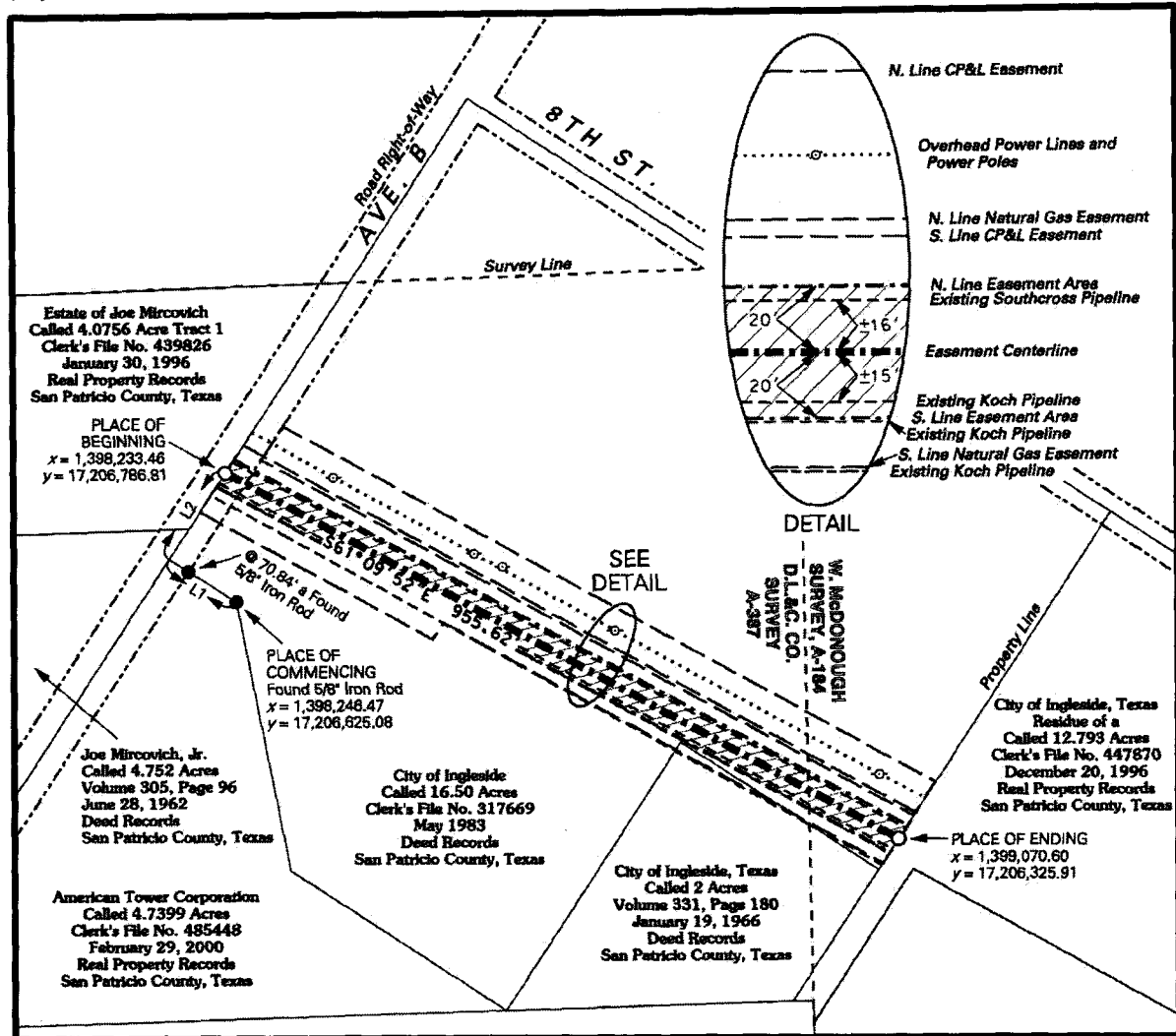
City of Ingleside  
P.O. Box 400  
Ingleside, TX 78362  
Attn: Jim Gray, City Manager



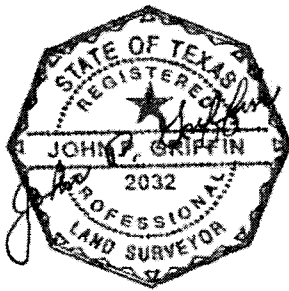
# EXHIBIT A

**JOHN GRIFFIN Surveyors, LLC**

212 BRYAN ST. FIRM 10061700 P. O. BOX 1437  
(936) 258-2639 DAYTON, TX 77535



NOTE: All bearings and coordinates are grid based on the Texas Coordinate System of 1983 (CORS), south zone, all distances are surface distance. This proposed centerline is 57.92 surface rods in length.



Page 1 of 6

LINE	BEARING	DISTANCE
L1	N57°15'22"W	99.15'
L2	N33°04'00"E	129.00'



SCALE: 1" = 200'



**MAP OF A  
Proposed Easement Across  
a Called 16.50 Acres  
SPNI-004.000**

Located in the  
**D.L.&C. COMPANY SURVEY,**  
Abstract 387  
and the  
**W. McDONOUGH SURVEY,**  
Abstract 184  
San Patricio County, Texas

July 21, 2014

## EXHIBIT A

STATE OF TEXAS           §  
                                  §  
COUNTY OF SAN PATRICIO §

**CENTERLINE OF A PROPOSED EASEMENT ACROSS A CALLED 16.50  
ACRE TRACT LOCATED IN THE DAY, LAND & CATTLE COMPANY SURVEY,  
ABSTRACT 387, AND THE WILLIAM McDONOUGH SURVEY, ABSTRACT 184,  
SAN PATRICIO COUNTY, TEXAS**

DESCRIPTION of the centerline of a forty-foot (40') wide easement over and across that certain called 16.50 acre tract described in Deed from Natural Gas Pipeline Company of America to the City of Ingleside, dated May 1983, and recorded in Clerk's File No. 317669 in the Deed Records of San Patricio County, Texas, located in the DAY, LAND & CATTLE SURVEY, Abstract 387, and the WILLIAM McDONOUGH SURVEY, Abstract 184, San Patricio County, Texas, and said 40' wide easement being 20 feet on each side of the following described centerline:

NOTE: All bearings and coordinates are grid based on the Texas Coordinate System of 1983(CORS), south zone, all distances are surface distance.

TO FIND the place of beginning, COMMENCE at a 5/8-inch iron pipe found in the common line of that certain called 16.50 acre tract described in Deed from Natural Gas Pipeline Company of America to the City of Ingleside, dated May 1983, and recorded in Clerk's File No. 317669 in the Deed Records of San Patricio County, Texas (the "City tract") and that certain called 4.7399 acre tract described in Deed from Robert James Osburn to American Tower Corporation, dated February 29, 2000, and recorded in Clerk's File No. 485448 of the Real Property Records of San Patricio County, Texas, said point having coordinates of  $x = 1,398,246.47$  and  $y = 17,206,625.08$ ;

THENCE North 57 degrees 15 minutes 22 seconds West, at 70.84 feet pass a 5/8-inch iron rod found in the east right-of-way line of Avenue B, in all a total distance of 99.15 feet to a point in the centerline of Avenue B;

THENCE North 33 degrees 04 minutes 00 seconds East, along the centerline of Avenue B, a distance of 129.00 feet to a point in the west line of the City tract, and the PLACE OF BEGINNING of this herein described 40' wide easement centerline, having coordinates of  $x = 1,398,233.46$  and  $y = 17,206,786.81$ ;

## EXHIBIT A

THENCE South 61 degrees 09 minutes 52 seconds East, a distance of 955.62 feet to a point in the common line of the City tract, and that certain called 12.793 acres described in Deed from Natural Gas Pipeline Company of America to the City of Ingleside, Texas, and recorded in Clerk's File No. 447870 in the Real Property Records of San Patricio County, Texas, and the PLACE OF ENDING of this herein described 40' wide easement centerline, having coordinates of  $x = 1,399,070.60$  and  $y = 17,206,325.91$ .

REFERENCE is hereby made to the plat titled "MAP OF A PROPOSED EASEMENT ACROSS A CALLED 16.50 ACRE TRACT" dated July 21, 2014.

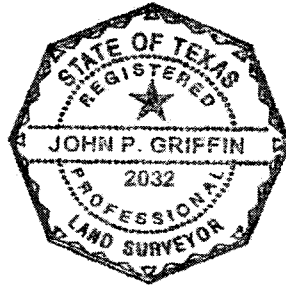
This proposed centerline is 57.92 surface rods in length.

SURVEYED August 26, 2013.

By

*John P. Griffin*

John P. Griffin  
Registered Professional  
Land Surveyor No. 2032



## EXHIBIT A

STATE OF TEXAS       §  
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COUNTY OF SAN PATRICIO §

**CENTERLINE OF A PROPOSED EASEMENT ACROSS THE RESIDUE OF A  
CALLED 12.793 ACRE TRACT LOCATED IN THE WILLIAM McDONOUGH  
SURVEY, ABSTRACT 184, SAN PATRICIO COUNTY, TEXAS**

DESCRIPTION of the centerline of a forty-foot (40') wide easement over and across the residue of that certain called 12.793 acre tract described in Deed from Natural Gas Pipeline Company of America to the City of Ingleside, Texas, dated December 20, 1996, and recorded in Clerk's File No. 447870 in the Real Property Records of San Patricio County, Texas, located in the WILLIAM McDONOUGH SURVEY, Abstract 184, San Patricio County, Texas, and said 40' wide easement being 20 feet on each side of the following described centerline:

NOTE: All bearings and coordinates are grid based on the Texas Coordinate System of 1983(CORS), south zone, all distances are surface distance.

TO FIND the place of beginning, COMMENCE at a found 5/8-inch iron rod with cap stamped "Urban Engr.", said point having coordinates of  $x = 1,398,964.01$  and  $y = 17,206,124.13$ ;

THENCE South 88 degrees 14 minutes 57 seconds West, a distance of 25.36 feet to a 1/2-inch iron rod (disturbed) found at the most western southwest corner of the residue of that certain called 12.793 acre tract described in Deed from Natural Gas Pipeline Company of America to the City of Ingleside, Texas, dated December 20, 1996, and recorded in Clerk's File No. 447870 in the Real Property Records of San Patricio County, Texas (the "Ingleside 12.793 acre tract");

THENCE North 33 degrees 04 minutes 44 seconds East, along the west line of the Ingleside 12.793 acre tract, a distance of 241.74 feet to a point in the common line of the Ingleside 12.793 acre tract, and that certain called 16.50 acres described in Deed from Natural Gas Pipeline Company of America to the City of Ingleside, Texas, dated May 1983, and recorded in Clerk's File No. 317669 of the Deed Records of San Patricio County, Texas, and the PLACE OF BEGINNING of this herein described 40' wide easement centerline, having coordinates of  $x = 1,399,070.60$  and  $y = 17,206,325.91$ ;

## EXHIBIT A

THENCE South 61 degrees 09 minutes 52 seconds East, a distance of 589.84 feet to a point in the west right-of-way of F.M. 1069, and the PLACE OF ENDING of this herein described 40' wide easement centerline, having coordinates of  $x = 1,399,587.31$  and  $y = 17,206,041.43$ .

REFERENCE is hereby made to the plat titled "MAP OF A PROPOSED EASEMENT ACROSS THE RESIDUE OF A CALLED 12.793 ACRE TRACT" dated July 21, 2014.

This proposed centerline is 35.75 surface rods in length.

SURVEYED August 26, 2013.

By

*John P. Griffin*

John P. Griffin  
Registered Professional  
Land Surveyor No. 2032

